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PROFESSOR FERRI'S COMMENT ON THE SEVENTH INTERNATIONAL CONGRESS AT COLOGNE.

ROBERT FERRARI.

On the 23rd day of November, at the Great Hall of the University of Rome, Enrico Ferri, Professor of Criminal Anthropology, delivered the first lecture in his course. It was a lecture of admirable simplicity and beauty. It contained a summary of the main events of the Congress, and, in especial, an exposition of the progress of the Positive School of Italy in other lands. The lecture is now published in the *Scuola Positiva* for January, 1912.

Though the form of what follows may indicate that it is a verbatim translation of Signor Ferri's lecture, it is rather a summary. Wherever it was feasible to use Signor Ferri's words I have used them. But I have, for the most part, condensed the language, while preserving the thought. Whenever I have deemed it advisable to clarify the ideas of the lecturer I have not scrupled to amplify and elaborate them in my own words and in my own way, and this for the benefit of English readers who might not be familiar with the doctrines and the mode of thought of the Italian Positive School.

Thirty years ago the biologic, social and juridicial teachings of Lombroso and others of the Italian School were ignored or mocked at. Gradually, however, day by day, they have become stronger and stronger, till now we are presented with the dazzling spectacle of having almost all our ideas not only accepted, but defended with the vigor of the original giants. Even public opinion is beginning to become aware of the fact that the forces and the forms of crime are the products of individual degeneration and of the mental and moral disequilibrium in the murky and filthy atmosphere of the family and of society at large. On the other hand, legislators and judges, and administrators are coming to know more and more that their systems, inspired by a penal and criminal metaphysics, are erroneous and have failed. These systems do not protect the honest from the criminal, but rather increase the amount of crime, and take away from the redeemable criminals, who are in the great majority, even the last ray of hope that they may some day become readjusted and readapted to the society which they have gotten out of harmony with and offended, and condemn them to the life of beasts, or to hydrophobia by cellular isolation, or by forced idleness. We have now at this University the Institute of Applied Criminology in which we study the criminal from the practical point of view. I shall during this year, with the help of several of my illustrious colleagues, establish the criminalistic section of this Institute, which shall be a school for the application of juridico-criminal ideas, an experimental laboratory, therefore, of re-

search in the biology and the sociology of the criminal, in the statistics of criminality, and in criminal prosecutions in court looked at from the point of view of the judge, the witness, the lawyers and the jury. It will, hence, be a school for putting into practice the theoretical knowledge gained in other courses. Germany and France have already established such schools, and there are several in Italy, among which is the Institute of Criminal Anthropology at the University of Turin. In this School of Juridico-Criminal Applied Science undergraduates and graduates, magistrates and functionaries will become expert in the examination of criminals, in the anatomy of crime and in the procedure at trial.

The Cologne Congress was admirably organized by the distinguished Aschaffenburg, Sommer and Kurella, and warmly received by the Municipality of Cologne. It had 290 members, among whom there were 14 governmental delegates, and 20 representatives of scientific associations. There were professors of criminology, psychiatrists, anthropologists, magistrates, prison officials, army colonels, police officials, District Attorneys and Attorney-Generals, and publicists. This Congress was the seventh in the series of International Congresses of Criminal Anthropology.

The first was held here in Rome in 1885, and that meeting marked the baptism of the new Science. The second was held at Paris in 1889. It was there that a line of demarkation was drawn between the French and the Italian schools. This line, however, is the result of a scientific misunderstanding. The "criminal type" discovered and shown to exist by Cesare Lombroso came to be understood in a purely anatomical sense. But the French School maintained—and in this position some people in Italy concurred—that the criminal was the exclusive product of the social environment. The truth is that I, as one of the Italian School, thought it necessary to account for the criminal in a more complex way, and said that crime is the result of three factors which are inseparable no matter how much in some case one factor or another may predominate: The anthropologic factor, that is, the organic and the psychic organization of the criminal, the telluric factor, that is, the geographic environment in which the man finds himself, and the social factor, the family and community conditions which every moment influence hereditary predispositions and acquired characters and, therefore, the conduct of every individual. There is in this conception nothing foreordained and predestined—nothing fatalistic. There are individuals who are predisposed from birth to tuberculosis, but this fact does not point inevitably to early or late death from tuberculosis. If these individuals have the good fortune to live in hygienic surroundings and in economic comfort they

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will not die from consumption; but if they are badly nourished, if they are oppressed by excessive work, if they live in squalid surroundings, and breathe foul air and get no sunlight, they will surely die of tuberculosis; the predisposition will find fertile soil in which to grow, and it will soon turn into actual disease. So it is with the person who has inherited predispositions to insanity or to suicide, or to crime. There is, hence, nothing fatalistic about this doctrine; on the contrary, it leaves room and scope for the betterment of the criminal by bettering his organism and his environment. It is, in fact, a spur to social and economic improvement. And it has the further advantage that it explains crime naturally and not metaphysically. The metaphysical is, by its very definition, beyond the pale of natural phenomena. We have no control over what is beyond nature. But we may so conduct our operations as to subdue physical phenomena to our wills.

At the Paris Congress a commission had been appointed to make a comparative study of 100 criminals and 100 normal persons of the same region and the same social class and to report at the next Congress at Brussels in 1892. This commission did not make this study because, it said *à priori*, it could not be done. For this reason the Italians did not take part in the Brussels Congress. It was natural, therefore, for the enemies of the Italian School to win an easy victory and to hasten to proclaim the death and the burial of criminal anthropology. But four years afterward, in 1896, the Congress at Geneva reaffirmed the victory of our doctrines, because I grasped the occasion to blot out the scientific misunderstanding concerning what I had in 1880 called the born criminal. I maintained, as the Positive School has always maintained, with the approbation of Lombroso, that the criminal is simply hereditarily predisposed to crime and not fatally condemned to it, because crime does not emerge unless the anthropological factor of the criminal works in conjunction with the physical and social environment. And Lombroso himself described the type of the born criminal who, by the way, is very rare, but who in favorable surroundings commits no crime.

The Fifth Congress was held at Amsterdam in 1901. It reconfirmed the decisive position of the Italian School upon the matter of the born criminal. The sixth was held at Turin in 1906 and was the scientific jubilee of Cesare Lombroso.

I must now proceed to present to you the general characteristics of the Seventh Congress, and the resolutions adopted by it.

The first characteristic was the triumphal affirmation of the doctrines of the Italian School. The Congress felt the number, the variety and the importance of the contributions brought to the Congress from

Italian representatives. Mario Carrara spoke on the "Importance, Theoretic and Practical, of the Cranial Anomalies of Criminals"; Gina Lombroso Ferrero, daughter of the master, contributed a paper on "Probation Systems for the Education of Juvenile Delinquents"; Dr. Saporito read a paper on "The Hospital for the Criminal Insane"; Captain Funaioli, a paper on "Crime in the Army"; Dr. Lattes, one on "Cerebral Asymmetries of Criminals"; Mr. Tarolli, one on "Sexual Neurasthenia in Relation to Crime." Other Italians who did not come sent on their researches. Among these were Sante De Sanctis, who wrote on "Epileptoids"; Professor Zuccarelli on "Comparison between Prehistoric Craniums and the Craniums of Contemporary Criminals"; Dr. Talciola on "The Treatment of the Criminal Insane"; Professor Del Greco on "The Criminal Mentality," Garofalo on "The Connection Between Personal Predispositions and the Influence of the Environment"; Ottolenghi on "The Relations Between a Scientific Police Force and Criminal Anthropology." I presented a paper on the "Tentative Penal Codes of Germany, Austria and Switzerland." The paper had a full discussion by the most distinguished representatives of the juridical, psychologic and social sciences, and the Congress voted a resolution which embodied the thought that the tentative codes mentioned systematically applied the conclusions of criminal anthropology and sociology for the defence of society against crime.

The second characteristic was that this was the first Congress held in Germany. Every man knows how valuable are the contributions of Germany to modern thought. It is, therefore, with peculiar pleasure that I note not only the advance made by the Italian School as you may see from the fact that the Congress then met on German soil for the first time, but also the fact that it was easy for the Italians to present their own views to the Germans and not views distorted by passage through the murky waters of our enemies.

The third feature was the absence of criminal sociology arguments. The themes included questions of criminal anthropology and of their juridical application. The questions of the social genesis of crime were excluded. This was a grave error, as the factors leading to crime must be studied if we wish to diminish crime.

The fourth salient quality was the scarcity of purely theoretic questions. This is explained in two ways: first, outside of Italy scientific researches in criminal anthropology, morphological and physio-psychic examinations of the criminal, are much rarer than they are among us; and secondly, technical researches mark the infancy of a science; the mature science feels the beating and the tremor of life. Upon the psychology of

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the criminal, however, there were some discussions in which Professors Lorimer and Mittenmaier, Klaatsch and Rosenfeld took able part.

The last great feature of the Congress was the decisive prevalence of arguments looking to the practical legislative, judicial and administrative application of the ideas and proposals advanced by the school of criminal anthropology and sociology. Two discussions which were summed up in two resolutions gave to this Congress the mark of practicality; one on the Draft Penal Codes of Germany, Austria and Switzerland; the other on the indeterminate sentence.

These tentative codes are the work of officials much more than they are of theoretic jurists, and hence they reflect immediate and practical knowledge rather than academic prejudices. My pupil, Filippo Grisignì, has made an excellent systematic study of these codes, and I have used it to present to the Congress their fundamental characteristics. These are first, the fact that the codes have put together, in the system of legal sanctions against crime, punishments and measures of security. The classical forms of punishment are here less numerous than are the measures of security. It was formerly held that the only measures of security that ought to exist were the measures adapted to protect society against the more abnormal criminals, or the more dangerous through recidivism, insanity, juvenility or alcoholism, because in these cases, it was said, there is no responsibility, or so little of it, and, hence, they were thought to belong to administrative penal law and not to penal law pure and simple. But now the point of view is changing as is evidenced by these codes, for here we have as the underlying current of thought not vengeance against the offender, but protection of society and reformation of the criminal. We cannot separate those who are morally responsible from those who are legally responsible. We must have one consistent theory. Everyone is legally responsible for the crimes he commits, whether he be morally responsible or not. Insanity does not excuse from legal responsibility, because this responsibility is based, according to our school, upon the protection of society. The morally responsible person must be segregated from society not because he has offended society and the latter wants to wreak vengeance upon him, but because society must protect itself, and it can protect itself only by excluding the offender from social life either temporarily or permanently. The morally irresponsible, the insane, for instance, must be separated from the normal life of the community also for the protection of society. Whoever lives in society has the advantages of social life, and must, if he does not adapt himself to the ways recognized as

proper by the community, suffer the disadvantages of exclusion from that life.

Over thirty years ago I distinguished these defensive measures into four classes; preventive measures, or means of social prophylaxis; measures reparatory of the damage done, which are sufficient for the occasional criminals guilty of light offenses; repressive measures; and eliminative measures, which consist in the temporary or permanent segregation of the habitual criminal who is less adapted to social life, in institutions preferably agricultural, but for an indeterminate time. This criterion of the readaptability of the criminal rather than the perilousness of him seems to me more complete and sure. If the end of penal justice is not moral or juridical retribution, but social defense, it is evident that the means taken against the criminal must be those which will make him suited to live in society, or those which will prove him to be incapable of living in society.

The second thing to notice about the Tentative Codes is that they do not base punishment upon the moral responsibility of the individual; The objective standards of the Codes make moral responsibility only a means of classifying the measures most apt for this or that criminal. To have attained in three Draft Penal Codes the application of an idea that subverts all the old criteria of retributive justice based upon moral culpability, is to have taken a long step on the way to the triumph of the ideas of our school.

The third characteristic of these Codes is that it is not the objective gravity of the crime, but the personality of the criminal that comes to the attention of the legislator, and, in consequence, must be actively present to the judge. So that it is now the indeterminate sentence that is one of the guiding lights of the new prospective laws; and the places of punishment, the prisons, have been abolished, and in their stead there have been established institutions for habitual criminals, workhouses, asylums for alcoholics, homes for correction and for education, places for the education of adolescents, asylums for the criminal insane.

The next feature of these Codes is the obligation imposed upon the judge to stretch out his power and his activities over the criminal after the latter has been sentenced. Formerly, the police arrested and prosecuted, the judge sentenced and the prison official executed the sentence. But these officials were all separated from each other. None cared for the previous or the later step. Each did his narrow and incomplete work, and none bothered about the whole process from arrest to discharge from prison. But now we have these different forces

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working in harmony to produce the much desired transformation—the readaptation of the criminal to social life. The judge has the right to sentence, or to suspend sentence, or to pardon absolutely, according to the determining motives of the crime and the character, whether more or less perverse, of the criminal, and he must interest himself in the criminal's after-life in prison, and if he finds that the unfortunate shows himself to be readapted to social life, then he may abridge the sentence and set him free.

Professor Gleispach argued for the indeterminate sentence, and Professor Thyreu argued for the classical doctrine. The discussion was ardent and prolonged. It was the thought of prison officials, and of reformatory directors, like Ives, the representative of the League for Penal Reform, of London, and of magistrates, like the eloquent Friedmann of Budapest, and like Von Hessert, Attorney-General at Darmstadt, that prevailed.

The Congress considered the sterilization of criminals as it is practiced, for example, in the State of Indiana, U. S. A. But the majority raised grave doubts concerning the advisability of such a procedure. As an individual therapeutic matter the surgeon may have recourse to sterilization, but I cannot think that the complex problem of criminality will find its solution in a surgical operation established by law.

There was connected with the Congress an International Exposition of Criminal Anthropology with a large collection of documents of human degeneration, truly strange and very suggestive, of instruments of criminality, and of technical means used in the fight against crime.

My exposition of how misdeism, that is, the sudden killing by soldiers of fellows and superiors, was rooted out of the Italian army, created a great impression, especially among the army doctors. The remedy for the gangrenous conditions that formerly existed was not the shooting of the offenders; it was, instead, the systematic application of the proposals of the criminal anthropological school, which advocated the judicious sorting out of the army those who were candidates for crime because of neuroses, especially of the epileptic kind. It was the publications of Lombroso, Bianchi, Setti, Zuccarelli, Frigerio, Borri, Morselli, Ottolenghi, Scarano, Trombetta, Lanza, Funaioli, Saporito, Consiglio, Cognetti, and others, on crime in the army that effected a noble conquest of science and of civilization.

The substitution of educators, teachers, for prison keepers is a great reform, the introduction of which is due to Alessandro Doria. Of this reform I notified the Congress. Oronzo Quarta has been charged

with the drawing up of a Code for children which, it is hoped, will be much more complete than the famous Children's Act of England. This new justice for minors, up till now, abandoned, abnormal, delinquent, shall become the justice of to-morrow for all juveniles and adults. This justice is founded upon the firm ground of the doctrines of our school: the study of the individual, in himself, as an organism, and in his relation to family and social causes that spurred him on to wrong, full power in the magistrate, who shall be expert in penal justice, and hence, well furnished with psycho-biologic and sociological, as well as juridical, cognitions, to adopt various means depending on the diversity of the cases, and execution of the sentence with the view to the social readaptation of the convict. Only then shall we see justice, not armed with the sword, but illumined by science, co-operating to diminish the pain and the misery of human life.